

**MINUTES**

**MONTANA SENATE  
59th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN KEN TOOLE**, on March 15, 2005 at 3:00 P.M., in Room 317-C Capitol.

**ROLL CALL**

**Members Present:**

Sen. Ken Toole, Chairman (D)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jeff Essmann (R)  
Sen. Dan Harrington (D)  
Sen. Dave Lewis (R)  
Sen. Greg Lind (D)  
Sen. Gary L. Perry (R)  
Sen. Glenn Roush (D)  
Sen. Carol Williams (D)

**Members Excused:** Sen. Dan McGee (R)

**Members Absent:** None.

**Staff Present:** Casey Barrs, Legislative Branch  
Claudia Johnson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 685, 3/11/2005; HB 316,  
3/11/2005  
Executive Action: None.

**HEARING ON HB 685****Opening Statement by Sponsor:**

**REP. ROY BROWN (R), HD 49**, opened the hearing on **HB 685**, Revise laws related to electricity supply and default supply service.

**REP. BROWN** informed the Committee this is a simple bill that will ensure that the consumers of electricity across Montana will have the lowest cost of electricity available from a financially stable and creditworthy entity that supplies electricity. He said there are some designer energy supply portfolios, which are called "Qualified Facilities" (QF). He said they are not as non-economical as they stand, because they are mandated. The consequences of these mandates are, the Montana utility customers are buying portfolios that consist of 14 percent QF, and they represent 24 percent of the total cost of the portfolio. He said that efforts are now being made to mandate other energy sources. He stated that this practice needs to be stopped. Montana consumers deserve access to the least expensive energy possible.

**Proponents' Testimony:**

**Brad Molnar, Commissioner and Vice Chair of the Montana Public Commission (PSC)**, said that no one wants to pay a higher energy cost than what they have to. He said that consumers want to pay the lowest price possible, but they are willing to pay four dollars more for green energy. But the rules of the PSC green or non-environmental energy are listed as five times the PSC criteria. The lowest cost is not necessarily the carbon or environmental energy, but what consumers thought as cheaper will not be if there is a carbon tax, or carbon dioxide tax, etc. He said what isn't happening is discussion that took place in the 2001, and the 2003 Legislature, is not having a diverse mix of long, medium, or short term power supply contracts that have staggered start and expiration dates. A green energy contract or a landfill methane gas, coal, or hydro, or any source should be able to approach the Montana PSC, and look at their charts, and say "I want 5 MHW for 30 years, or 10 mHW for six months". Anyone should be able to purchase this, and not someone that receives tax credit support. He reiterated that 99.9 percent of the suppliers have come out in support of this legislation. He urged the Committee to support this bill.

**Opponents' Testimony:**

**Tom Schneider, Commissioner, PSC**, said the vote by the five commissioners on this legislation by the PSC failed 3-2. The PSC doesn't support HB 685. He informed the Committee that he hasn't

seen any consumer come forward in support of this bill. He urged a do not pass.

**Patrick Judge, Montana Environmental Information Center (MEIC)**, said that Dr. from the University of Montana, who talked about portfolios, said that contracts can be drawn up at various times. **Mr. Judge** talked about market power and man side management. He distributed a graph on NorthWestern Energy (NW) regarding risk-adjustment estimate cost about a case against NW in 2004. The Dr. informed him that consumers will receive many attributes, such as; nutrition produced by a company that a person trusts. He said contracts can be purchased and signed for various lengths of time. There are different resources for the different kind of needs, such as; base load resources, etc. He said it isn't simple when trying to find the lowest cost short term resources. He urged the Committee not to support HB 685.

**EXHIBIT (ens57a01)**

**Chuck Magraw, Natural Resources Development Counsel (NRDC), and NorthWest Project (NRP)**, stated they also oppose this bill. He said it is a dangerous bill, and it isn't necessary. He distributed a handout with excerpts from the PSC guidelines, and what the companies are required to do. There is a wide range of factors that a prudent energy-secure facility would have to look at, and make a decision. He said there is a trade-off between cost and risk. If this bill becomes law, it will expose Montana consumers by falsifying a fairly large risk. He read excerpts from the PSC guidelines. In July 2003, the PSC denied a request by NW to recover certain natural gas costs. He said that NW had asked for \$20 million, but the PSC disallowed \$10 million. The PSC said that NW hadn't been prudent in long-term natural gas contracts. He said this bill does not allow the PSC to tax NW. He talked about the de-regulation of NW. He asked the Committee not to support this bill.

**EXHIBIT (ens57a02)**

**Archie Nunn, representing self**, informed the Committee that this bill will take away from the PSC what they are already doing. He said the Committee doesn't need to tie the PSC hands.

**Bob Raney, Commissioner, PSC**, informed the Committee that if they do the math, this bill doesn't work. He addressed the 22-page guidelines by the PSC that was distributed by Chuck Magraw. (see Exhibit 2) He said the PSC is going to find the lowest long-term total cost. He said this bill removes the words "long-term", and just leaves "total cost". He questioned, "at what point in time is it the lowest cost". He said, "if that is the lowest cost in

three years, does that mean that we are missing out on opportunities for having it be the lowest cost in five, ten, and twenty years, because the PSC is required to make sure it was the lowest cost". He said it takes a long time to establish rules, and the rules on the handout, exhibit 2, and they were established until the summer of 2003. He said the guidelines will have to be rewritten, because of the rule-changes in this bill. He said the result from these changes could mean that the consumers will be paying more for electricity in the long-term, because the requirement in this bill is to ensure that consumers are paying the lowest cost in the short-term.

**Greg Jergeson, Commissioner and Chairman of the PSC**, stated that Commissioners Schneider and Raney have already voiced his opinion of this bill. He did add that in the last session, 2003, the legislators worked hard in the passage of HB 509 and SB 247. HB 509 consisted of the overarching in supplying the procurement legislation on how a default supplier is suppose to go about in acquiring their supply. SB 247 was the advanced approval bill. He stated that the Commission supported HB 509, and reluctantly went along with SB 247. With the passage of these two pieces of legislation, the PSC proceeded to adopt the necessary rules and guidelines for the procurement process of the default supplier, who also proceeded through their process. He said that the PSC has processed one application under the default supplier guidelines, and were able adjudicate them. The PSC has received another application that is due for process this month, but this bill changes that process to indict a probable cause for evidence, and there is a problem that needs to be solved.

**{Tape: 1; Side: B}**

**Commissioner Jergeson** stated that the PSC will always be interested in making sure that supplies of energy are the best buy possible for the consumers of that energy, but he stated, there are factors that go into establishing which is the best buy. He urged the Committee to defeat this bill.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. ROUSH** asked **REP. BROWN** if natural gas prices are included in this bill. **REP. BROWN** replied, no.

**SEN. VICE CHAIR WILLIAMS** asked **Commissioner Raney** about the short-term versus the long-term cost. **Commissioner Raney** replied that what may be good in the short-term, and they may be terrible

risk for the long-term. He said that any stocks at its lowest cost are the highest risk.

**SEN. ESSMANN** asked **Commissioner Jergeson** about the required contracts, and if those contracts are all fixed-costs.

**Commissioner Jergeson** responded, stating that the criteria is determined at the time a default supplier brings the contracts to the PSC.

**SEN. CURTISS** asked **Commissioner Schneider** to site specific examples of what he considers potential sources of a solution relative to the existing pollution. **Commissioner Schneider** replied Colstrip. He stated that the gases emitted from those plants, and solid waste that are all elements for pollution. He said even coal projects have environmental impacts. **SEN. CURTISS** asked him to give the Committee the percentiles of plants emitting gases, etc. **Commissioner Schneider** replied that he didn't have those figures with him. He said there are tons and tons of particulate gases that are emitted from those first class plants. He commented that the PSC has gone through the Siting Act and they are all identified.

**SEN. CURTISS** asked **Commissioner Schneider** if there are currently plants that are out of compliance. **Commissioner Schneider** replied, no.

**CHAIRMAN TOOLE** asked **REP. BROWN** how he would value this bill if it is passed. He said, "if two people came in, and one was marginally inexpensive, and you knew that there was more risk involved in pursuing that lower cost, what would you do". **REP. BROWN** responded that there is risk in any process with the PSC. The PSC has the right to check out the risk of any source to get the lower price, and there isn't much difference between the two companies, then the PSC would take the lower price. **CHAIRMAN TOOLE** said the bill states "lower costs". He said if a person that is operating a company, and putting together a portfolio to purchase a resource, but one is riskier and cheaper then the other, what he would do. **REP. BROWN** replied that language was placed on the bill by the House Committee. He said the language added in was "lowest cost from a from a financially stable and creditworthy entity that supplies electricity." He said, if a person has a contract with a financially stable and creditworthy person, then the purchaser should be able to take the lowest cost energy. **CHAIRMAN TOOLE** asked how an entity would purchase that supply if the intermittent source is the lowest cost and the company is creditworthy and stable. **REP. BROWN** said, that is why this bill has come forward. He said if a entity looked at the intermittent cost, they would have to look at the cost difference.

**{Tape: 2; Side: A}**

**CHAIRMAN TOOLE** asked **REP. BROWN** about using wind resource, and it is intermittent, but it is the lowest price, how would a person avoid purchasing that. **REP. BROWN** responded that the PSC would look at that and state, it isn't the lowest cost, because there would have to be a backup e.g., gas; therefore, it wouldn't be the lowest cost.

**CHAIRMAN TOOLE** asked **REP. BROWN** if a person would be precluded under this bill from purchasing a resource that carries value, because it is highly detachable, but the price is higher than other resources on the market. **REP. BROWN** stated that what this bill does, it directs Montana policy to find the lowest price of electricity for consumers.

**Closing by Sponsor:**

**REP. BROWN** closed. He discussed the word "entity". He said the statute states, "plural is singular, and singular is plural". He said the bill is not talking about all the portfolios, but one particular entity, which could be several different entities. He said what the bill does, is it doesn't tie the PSC hands. The PSC can do short-term, long-term, they can do hedging, as long as they are purchasing the resource at the possible price. **REP. BROWN** said that Montana consumers don't care how or what the quality is of the electricity, as long as they have it. He urged the Committee to support this bill.

**HEARING ON HB 316**

**Opening Statement by Sponsor:**

**CHAIRMAN TOOLE** opened the hearing for **REP. TIM CALLAHAN (D)**, HD 21, on **HB 316**, Revise fees charged by public service commission.

**Proponents' Testimony:**

**Bob Raney, Commissioner, PSC**, said that the PSC voted unanimously in support for this bill. He informed the Committee the reason for the bill is every time the PSC is audited, the report comes back that they are not complying with the rules. He stated that the PSC cannot do the term "commensurate" with costs, because people are making applications for a service such as the transportation authority. He said all of the fees the PSC collects for is for transportation authority, not the \$6,700 a year. He said that one of the changes is that commensurate cost must be reasonable. He said this bill takes away the \$6,700 from

the general fund, and places it in the PSC fund. He explained that the PSC provides the service to the transportation companies, and the staff that oversees this program is entirely funded by taxes placed on energy companies. He stated that as long as the PSC is handling the funds, they should be able to put those funds back into the PSC account, and not the general fund. He said that the transportation service fees is at the cost of electric and gas rate payers, so the funds should go back into the special account that provided the services.

**Greg Jergeson, Chairman and Commissioner of the PSC,** informed the Committee that the PSC is required to charge the commensurate fee cap of \$500. He said that the cost in the statute refers to the PSC, but the cost is actually \$1,400, and the law states the PSC is capped at \$500. There is a flaw in the statute, and the PSC gets blamed for it, and this is the purpose of the bill.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:** None.

**Closing by Sponsor:**

**CHAIRMAN TOOLE** closed for **REP. CALLAHAN**.

**ADJOURNMENT**

Adjournment: 4:45 P.M.

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SEN. KEN TOOLE, Chairman

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CLAUDIA JOHNSON, Secretary

KT/cj

Additional Exhibits:

**EXHIBIT ([ens57aad0.TIF](#))**